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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/693,350

10/24/2003

Daniel W. Tollenaar

2-5578-004

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803 7590 12/29/2006

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DES MOINES, IA 50309-4076

EXAMINER

KATCHEVES, BASIL S

ART UNIT

PAPER NUMBER

3635

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

12/29/2006

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/693,350

Applicant(s)

TOLLENAAR, DANIEL W.

Examiner

Basil Katcheves

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 October 2006.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 42-97 and 114-116 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 42-79 is/are allowed.  
6) ☒ Claim(s) 80-97 and 114-116 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Claims 42-113 are pending of which claims 98-113 have been withdrawn. Claims 42-97 and 114-116 are examined below.

#### ***Double Patenting***

The terminal disclaimer dated 10/15/04 has been approved.

#### ***Claim Rejections - 35 USC § 102***

**Claims 80-85, 87, 88, 90, 92-93, 114 and 115 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,275,534 to Porter.**

Regarding claims 80, 81, 90-93, , Porter discloses a plurality of upright leaning studs (fig. 1 & 10: 20) having four sides, a plurality of backing members (fig. 1 & 10: 128), having four sides, which extend between the plurality of studs (fig. 1), the backing members having a side which is disposed upon a plane substantially similar to a plane in which a side of the studs is disposed upon, a plurality of substantially planar spacing structures (fig. 10: 123) spanning between and spacing the backing members (128), the planar structure being on a plane (123) which is substantially parallel to the first plane which the backing members and studs are disposed upon. Also, Porter discloses the backing members as laying on the same plane, regarding their front sides (top side in fig. 10) and the planar structure (123) overlaps a portion of the second end of the first

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backing member and a portion of the first end of the second backing member (fig. 10: see overlap where 127 points).

Regarding claims 82, 83, Porter discloses the planar structures (123) as being made of metal (claim 1).

Regarding claims 84, 85, Porter discloses the backing members (128) as being wood.

Regarding claims 87, 88, 114, and 115, Porter discloses the studs as being made of U shaped metal (20).

### ***Claim Rejections - 35 USC § 103***

**Claims 86, 89, 91, 94, 95-97 and 116 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,275,534 to Porter.**

Regarding claim 86, Porter discloses the use of pressed board (120) attached to the studs, not sheetrock in particular. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify to use sheetrock, as pressed board and sheetrock are functional equivalents in the art of construction.

Regarding claim 89, Porter discloses the use of steel for the structure, but does not particularly disclose the use of galvanized steel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use galvanized steel, as galvanized steel is commonly used on structures which will be subjected to excessive moisture and liquids, in this situation, outdoor structures.

Regarding claim 91, 94 and 95, Porter discloses the claimed invention with 3 planar studs, not four. It would have been obvious to one having ordinary skill in the art at the time the invention was made to add a fourth stud, since it has been held that a mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. V. Bemis Co.*, 193 USPQ 8.

Regarding claims 96 and 97, Porter discloses a plurality of upright leaning studs (fig. 1 & 10: 20) having four sides, a plurality of backing members (fig. 1 & 10: 128), having four sides, which extend between the plurality of studs (fig. 1), the backing members having a side which is disposed upon a plane substantially similar to a plane in which a side of the studs is disposed upon, a plurality of substantially planar spacing structures (fig. 10: 123) spanning between and spacing the backing members (128), the planar structure being on a plane (123) which is substantially parallel to the first plane which the backing members and studs are disposed upon. Also, Porter discloses the backing members as laying on the same plane, regarding their front sides (top side in fig. 10) and the planar structure (123) overlaps a portion of the second end of the first backing member and a portion of the first end of the second backing member (fig. 10: see overlap where 127 points). Porter discloses the claimed invention with 3 planar studs, not four. It would have been obvious to one having ordinary skill in the art at the time the invention was made to add a fourth stud, since it has been held that a mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. V. Bemis Co.*, 193 USPQ 8.

Regarding claim 116, Porter discloses the studs as being made of U shaped metal (20).

***Allowable Subject Matter***

Claims 42-79 are allowed as in the previous office action.

***Response to Arguments***

Applicant's arguments filed 10/31/06 have been fully considered but they are not persuasive. The applicant argues that the planar member (123) of the prior art does not overlap the backing members. However, the applicant should note that the members can be considered as being planar since they have a major portion which is planar and they overlap the backing members at three areas per each backing member. These areas are where (127) points, that being the two sides and the lower middle web. This is sufficient to read upon the claimed limitations, since they call for an overlap of the planar member with the backing member. These three sides each overlap the backing member. Each planar member (123) overlaps two backing members by three overlapping sides per backing member.

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (571) 272-6846. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack, can be reached at (571) 272-6848.

BK

  
Basil Katcheves

12/21/06

Examiner AU 3635